

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**  
*See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24*

**FILED BY CLERK**  
**MAY 15 2013**  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

In re )  
2003 CHEVROLET 4DSD, REG. )  
AZ/AVK5971. )  
\_\_\_\_\_ )  
2 CA-CV 2012-0154 )  
DEPARTMENT A )  
MEMORANDUM DECISION )  
Not for Publication )  
Rule 28, Rules of Civil )  
Appellate Procedure )

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV201200701

Honorable Bradley M. Soos, Judge

VACATED AND REMANDED

M. Lando Voyles, Pinal County Attorney  
By Craig Cameron

Florence  
Attorneys for Appellant

Paul H. Torres

Mesa  
In Propria Persona

M I L L E R, Judge.

¶1 In this contested, in-rem forfeiture action, the state appeals from the trial court's denial of its application for forfeiture of a 2003 Chevrolet Malibu that was allegedly purchased with proceeds Sierra Chaplik had obtained from stealing and then selling a camper trailer. The state argues the court erred in finding claimant Paul Torres

had established an exemption from forfeiture under A.R.S. § 13-4304. For the following reasons, we vacate the court's ruling and remand the case for further proceedings.

### **Factual and Procedural Background**

¶2 This forfeiture action arose out of the theft of a camper trailer. The state alleged that the proceeds from the theft were used to purchase the Malibu. Torres claimed that he bought the Malibu with proceeds from the sale of another vehicle and his social security check.

¶3 “We view the facts in the light most favorable to sustaining the verdict reached by the trial court.” *In re 4030 W. Avocado*, 184 Ariz. 219, 219, 908 P.2d 33, 33 (App. 1995). The relatively few undisputed facts are as follows. On February 9, 2012, Chaplik, a 20-year-old woman who rented a room from Torres, concocted a scheme whereby she surreptitiously sold a friend's camper trailer to a reseller (Camper World). Because she had no identification or bank account, Chaplik instructed Camper World to issue a check to Torres for the \$3,000 purchase price. Chaplik was charged with theft, pled guilty, and was placed on probation. Although Torres was present when the trailer was sold to Camper World, he was not charged because the investigating detective was not able to determine whether Torres was aware of Chaplik's scheme.

¶4 Chaplik, Torres, and the investigating detective testified at the forfeiture hearing. Chaplik admitted stealing the trailer and providing some of the proceeds to Torres for back rent. It was not clear from the testimony how the money from Camper World was distributed between Torres and Chaplik.

¶5 Torres denied that he had any knowledge of the theft or had received any of the proceeds. He stated that he, too, was duped by Chaplik's actions with the trailer (although by the time of the forfeiture hearing, he had forgiven her and they were engaged to be married). He asserted that he purchased the Malibu with his own money, although it was unclear why Chaplik's name was on the title. There was evidence that Torres had accused Chaplik of taking advantage of him to get her name on the title. Chaplik generally supported Torres's testimony about the money used to purchase the car. In contrast, the detective testified that Chaplik told him she purchased the Malibu. Based on the conflicting testimony, the trial court made the following findings as summarized by the signed minute entry:

The Court notes that the State has established the burden of proving to the Court that the vehicle is subject to forfeiture as it is clearly the proceeds of a racketeering offense. However, there are conflicting facts and testimony. The Court further notes that the title in the vehicle was transferred to Claimant Paul Torres and Sierra Chaplik after the date of the offense; however, there is a Bill of Sale and testimony from the Claimant that the sale actually took place on February 1, 2012.

The issue of the Court is whether the Claimant knew that the funds used to purchase the vehicle were proceeds of an offense. The Court finds that based upon all of the evidence, specific facts, and testimony presented, a reasonable conclusion is that the Claimant did not know and could not reasonably have known that the sale of the camper to Camper World as arranged and executed by Sierra Chaplik was a theft;

Therefore, it is ordered denying the State's request to forfeit the vehicle.

It is further ordered the above entitled vehicle shall be returned to the Claimant forthwith.

The court did not refer to A.R.S. § 13-4304 in its minute entry or identify the statutory exemption it found to apply to Torres's claim.

¶6 The state filed a motion for reconsideration, arguing that Torres did not prove any exceptions. The trial court summarily denied the motion, and the state timely appealed. We have jurisdiction pursuant to A.R.S. § 12-2101.

### **Discussion**

¶7 The state argues the trial court erred in denying its application for forfeiture of the Malibu because Torres did not qualify for an exemption to forfeiture as an innocent owner under A.R.S. § 13-4304(4). The state also argues that Torres does not qualify as a bona fide purchaser for value under A.R.S. § 13-4304(5).

¶8 We review the trial court's application of the forfeiture statutes de novo. *In re \$2390 U.S. Currency*, 229 Ariz. 514, ¶ 5, 277 P.3d 219, 221 (App. 2012). We will uphold the ruling on an application for forfeiture if supported by any reasonable evidence. *Id.* The court's factual findings will not be disturbed unless they are clearly erroneous. *See In re \$315,900 U.S. Currency*, 183 Ariz. 208, 211, 902 P.2d 351, 354 (App. 1995).

¶9 The state has the initial burden of proof to establish the property seized is subject to forfeiture. A.R.S. § 13-4311(M). Once the state does so, the burden shifts to the claimant to establish that his or her interest in the property is exempt from forfeiture.

*Id.* The exemptions from forfeiture are set forth in A.R.S. § 13-4304. As relevant here, that statute provides two exceptions:

4. No owner's or interest holder's interest may be forfeited under this chapter if the owner or interest holder establishes all of the following:

(a) He acquired the interest before or during the conduct giving rise to forfeiture.

(b) He did not empower any person whose act or omission gives rise to forfeiture with legal or equitable power to convey the interest, as to a bona fide purchaser for value, and he was not married to any such person or if married to such person, held the property as separate property.

(c) He did not know and could not have reasonably known of the act or omission or that it was likely to occur.

5. No owner's or interest holder's interest may be forfeited under this chapter if the owner or interest holder establishes all of the following:

(a) He acquired the interest after the conduct giving rise to forfeiture.

(b) He is a bona fide purchaser for value not knowingly taking part in an illegal transaction.

(c) He was at the time of purchase and at all times after the purchase and before the filing of a racketeering lien notice or the provision of notice of pending forfeiture or the filing and notice of a civil or criminal proceeding under this title relating to the property, whichever is earlier, reasonably without notice of the act or omission giving rise to forfeiture and reasonably without cause to believe that the property was subject to forfeiture.

A.R.S. § 13-4304(4) and (5).

¶10 The state first contends the innocent owner exemption contained in § 13-4304(4) does not apply because the Malibu was acquired with proceeds from a racketeering offense and, therefore, the first element of the exemption could not be satisfied. We agree.

¶11 The trial court seemed to find that Torres established the third element required for this exemption (lack of knowledge of the theft). However, because the court also found proceeds of a racketeering offense were utilized to purchase the Malibu, it follows that Torres could not have acquired ownership prior to the offense. He therefore cannot establish the first element of the exemption (acquisition of interest before the theft). Additionally, title constitutes prima facie evidence of ownership. *See In re 1986 Chevrolet Corvette*, 183 Ariz. 637, 639, 905 P.2d 1372, 1374 (1994). Here, title to the Malibu was not transferred to Torres and Chaplik until the day after the theft of the camper. Torres is not entitled to the innocent owner exemption to forfeiture.

¶12 The state next argues that Torres does not qualify as a bona fide purchaser for value under A.R.S. § 13-4304(5) because he did not provide any value in exchange for the Malibu, thus failing to satisfy the first prong of the exemption.

¶13 “A [bona fide purchaser] must purchase property in good faith, for value, and without notice.” *Hunnicut Constr., Inc. v. Stewart Title and Trust of Tucson Trust No. 3496*, 187 Ariz. 301, 307, 928 P.2d 725, 731 (App. 1996). The mark of a bona fide purchaser for value in both statutory and common law is that the person be without

knowledge of any competing claim. *See Warren v. Whitehall Income Fund* 86, 170 Ariz. 241, 243, 823 P.2d 689, 691 (App. 1991); A.R.S. § 47-8303 (Uniform Commercial Code; where term “protected purchaser” is used in lieu of “bona fide purchaser”); Black’s Law Dictionary 1355 (9th ed. 2009) (“One who buys something for value . . . without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller’s title.”). “It is this innocence or absence of knowledge . . . that impels the law to grant protection to unwitting purchasers.” *In re 1986 Chevrolet Corvette*, 183 Ariz. at 639, 905 P.2d at 1374.

¶14 The trial court found the Malibu was purchased—at least in part—with proceeds of a theft. Torres cannot be a bona fide purchaser for value to the extent he acted on Chaplik’s behalf. Similarly, unless Torres gave value in exchange for whatever proceeds he received from Camper World, he cannot establish that he was a bona fide purchaser for value.

¶15 We cannot determine from the trial court’s findings whether it denied the state’s application for forfeiture because it concluded Torres was an innocent owner, pursuant to § 13-4304(4), or because it concluded he was a bona fide purchaser for value, pursuant to § 13-4304(5). *See* A.R.S. § 13-4311(N)(1) (“court shall order an interest in property returned” to interest holder if state fails to establish property subject to forfeiture or claimant sustains burden of proving exemption). If it found an exemption pursuant to § 13-4304(4), then the order should be vacated, and the vehicle forfeited to the state. *See supra* ¶ 11. Alternatively, if the trial court based its ruling on the bona fide purchaser

exemption, the factual findings are insufficient to support it, particularly as to the basis for Torres's interest and the value of that interest. Without an order specifying the particular exemption and the requisite factual findings, this court would be required to choose some facts over others or to speculate about the trial court's findings.

### Disposition

¶16 For the foregoing reasons, we vacate the trial court's order and remand the case for further proceedings consistent with this ruling.

/s/ Michael Miller  
MICHAEL MILLER, Judge

CONCURRING:

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Presiding Judge

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge